Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

FINAL AWARD ALLOWING COMPENSATION

Injury No.: 04-042773

Employee: Jacob Hahne

Employer: 1) Site Oil
2) Convenient Food Mart

Insurers: 1) Hartford Fire Insurance Company
2) Hartford Fire Insurance Company

Additional Party: Treasurer of Missouri as Custodian of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties' briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we substitute the analysis of the administrative law judge for our own as to the appealed issues, and in all other respects we affirm the award. The award and decision of Administrative Law Judge Joseph E. Denigan, issued May 31, 2011, is attached and is incorporated only to the extent it is not inconsistent with our findings, conclusions, and analysis herein.

Preliminaries

Employee submitted a timely Application for Review with the Commission consisting of twenty-six pages detailing sixteen numbered claims of error and including eight attached exhibits. Employee followed this with a brief that extends (including its own attached exhibits) to almost ninety pages. As best we can determine from employee's filings (which fail in numerous respects to comply with our briefing rules), it appears that employee's primary contention is that the administrative law judge's findings on the issue of medical causation are in error because employee's doctors should be deemed more credible.

Employee has made no request to submit additional evidence to this Commission. To the extent employee asks, by attaching exhibits to his Application for Review and Brief, that we consider evidence that was not offered and received into evidence at the hearing, we deny the request because employee has failed to comply with the requirements of 8 CSR 20-3.030(2)(A), our rule pertaining to the submission of additional evidence. Accordingly, we have confined our review to the record created at the hearing in this matter.

After carefully considering the evidence, we agree with the result reached by the administrative law judge but cannot adopt his decision as written because of a number of errors. Specifically, we advise the parties to disregard the opening paragraph of the administrative law judge's award, which states that employee's claim is for a "low back injury" with a "reported accident date of January 4, 2006." As the parties will be well aware, these statements are incorrect. In light of this error and other problematic comments, the Commission issues this decision substituting the analysis of the administrative law judge on the issue of medical causation (and those issues incidental thereto) for our own findings, conclusions, and analysis as set forth herein. In all other respects, we affirm the award.

Findings of Fact

On February 13, 2004, employee slipped on ice while working for employer. Employee twisted his left knee but did not fall to the ground. Employee continued working and completed his shift. Employee did not immediately ask employer for treatment or go to a doctor because he thought he could walk it off. Employee previously fractured his left leg in 1997 when he fell off the top of a car being driven by his friend and had his left leg run over.

On March 15, 2004, employee saw Dr. Patel, complaining of a two week history of left lower leg pain and denying any specific injury. Dr. Patel found no swelling, erythema, or increased warmth in employee's left leg. Dr. Patel noted employee's previous left leg fracture. Dr. Patel believed employee's symptoms were not likely due to a blood clot and appeared instead to be musculoskeletal. Employee saw Dr. Patel again on March 22, 2004. Employee had the same symptoms. Employee showed no signs of swelling or erythema. Dr. Patel noted employee was working on his feet for 10 hours per day since his pain began. Dr. Patel reiterated the belief that employee's leg pain was musculoskeletal in origin. Dr. Patel told employee to take ibuprofen, rest, elevate his leg, and use moist heat.

On March 28, 2004, employee was admitted to St. Elizabeth's Hospital, where doctors, via a venous Doppler study, discovered a deep venous thrombosis (DVT) in employee's left leg. During his treatment for the DVT, it was noted that employee has a family history for protein C deficiency, and blood tests did show abnormally low levels of protein C activity in his blood stream. Doctors put employee on Warfarin (a medication used to prevent blood clots) and discharged him from the hospital on March 30, 2004. Employee recovered and went back to working full duty until employer fired him for circumstances unrelated to this matter. In 2008, doctors found a second blood clot and increased employee's dosage of Coumadin. Employee found another job and now works full-time, without doctor-imposed restrictions. Employee has to be careful to avoid cuts due to the anti-coagulant effect of Warfarin, which he continues to take.

The parties present a number of competing expert opinions as to the medical causation of employee's left leg DVT. We have the benefit of opinions from Dr. Lattimore, Dr. Poetz, Dr. Rende, Dr. Ludwig, and Dr. Blinder on the question.

Dr. Lattimore provided follow-up treatment for employee for his DVT condition and its sequelae after employer left the hospital. Dr. Lattimore believes that the DVT is attributable to the accident of February 13, 2004. Dr. Lattimore opined that you need an injury or event to cause a blood clot, and that employee's DVT manifested within a reasonable time after the February 2004 accident. Dr. Lattimore opined employee suffers from a protein C deficiency. Dr. Lattimore is board certified in family medicine and osteopathic manipulative therapy. Dr. Lattimore is not a specialist in vascular diseases or their treatment, estimates he treats maybe six DVTs per year, and would defer to a specialist on the impact of protein C deficiency.

Dr. Poetz believes the February 13, 2004, accident was the substantial and prevailing factor causing employee to develop DVT. Dr. Poetz believes that it is not at all unusual for a blood clot to take a month or more to develop after a trauma. Dr. Poetz believes employee was diagnosed with a protein C deficiency. Dr. Poetz agrees a protein C deficiency could predispose someone to developing DVT. Dr. Poetz disagrees, however, that employee's protein C deficiency predisposed him to developing DVT. Dr. Poetz tried to explain this somewhat contradictory position by restating his opinion that the injury caused employee's DVT. Dr. Poetz is board certified in family medicine and is a professor of family medicine at St. Louis University School of Medicine. Dr. Poetz does not specialize in the treatment of vascular diseases or injuries.

Dr. Rende believes the February 2004 accident resulted in pain, some limited activity, and subsequent formation of DVT, and that employee was predisposed to DVT due to the familial protein C deficiency. Dr. Rende originally believed (incorrectly) that employee's DVT was diagnosed a mere two weeks following the work accident, but did not change his opinion when he was informed of this mistake. Dr. Rende's original opinion that the DVT was secondary to the work injury was based on his belief (also incorrect) that employee had a period of inactivity following the work injury.

Dr. Ludwig believes employee has a protein C deficiency and that this is the predominant factor (as well as a substantial factor) in causing employee's DVT. Dr. Ludwig believed the accident was "a factor" in

causing the DVT but stopped short at identifying it as a "substantial" factor. Dr. Ludwig explained it is possible to have a spontaneous thrombotic lesion without a specific attendant trauma. Dr. Ludwig opined employee suffered a 5% permanent partial disability of the left leg as a result of the February 13, 2004, accident. Dr. Ludwig is a registered vascular technologist and treats DVTs every day.

Dr. Blinder believes the work accident was not a substantial factor in causing employee's DVT and identified a number of reasons for his conclusion, including the fact employee did not have a prolonged period of immobility after the accident, the Doppler study taken at St. Elizabeth's indicated an acute DVT which would not relate back to the work accident occurring six weeks prior, a protein C deficiency is a well-identified potent risk factor for DVT, and employee's subsequent development of a second blood clot indicates employee is hypercoaguable (or prone to clotting and DVTs) independent of the work injury. Dr. Blinder explained a DVT can happen any time, even in the absence of a protein C deficiency. Dr. Blinder also pointed out that if employee's leg was (as employee testified) swollen following the accident, the swelling would not have resolved on its own (as the records of Dr. Patel reveal it did) if it was related to a DVT. Dr. Blinder specializes in hematology and internal medicine.

After carefully reviewing the testimony from each of these experts, we find Dr. Blinder's opinion most credible. We consider Dr. Blinder more qualified than the doctors advanced by employee as to the question whether employee's DVT was related to the work accident. Dr. Blinder is the only physician to testify in this matter who is board-certified in hematology. We find that employee's work was not a substantial factor causing his DVT and resulting medical condition or disability. Rather, we find that employee's work was a substantial factor causing a knee strain injury and some permanent partial disability.

We find that employee reached maximum medical improvement on March 22, 2004, the date he last saw Dr. Patel. We find that a permanent partial disability of 7.5% of the left knee best represents the permanent disability resulting from the knee strain.

Conclusions of Law

Medical causation

The chief contention in this matter is over the question of medical causation. The parties dispute whether the accident of February 13, 2004, caused employee to develop the DVT and related sequelae. The version of § 287.020.2 RSMo applicable at the time employee sustained his injury sets forth the standard for medical causation and states, as follows:

> An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable because work was a triggering or precipitating factor.

We have found Dr. Blinder the more credible expert and have adopted his opinion that employee's work was not a substantial factor in causing his DVT condition or related sequelae. On the other hand, we have found that employee sustained a knee twisting or musculoskeletal injury as a result of the February 2004 accident.

Accordingly, we conclude that employee's knee strain injury was clearly work related and that work was a substantial factor in causing employee to sustain a knee strain injury, but that employee's DVT and related sequelae were not clearly work related and that work was not a substantial factor causing these medical conditions or related disability.

Injury arising out of and in the course of employment

The parties dispute the issue whether employee sustained an injury arising out of and in the course of employment. Section 287.020.3(2) RSMo provides, as follows:

> An injury shall be deemed to arise out of and in the course of the employment only if:
>
> (a) It is reasonably apparent, upon consideration of all the circumstances that the employment is a substantial factor in causing the injury; and
> (b) It can be seen to have followed as a natural incident of the work; and
> (c) It can be fairly traced to the employment as a proximate cause; and
> (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

"An injury arises out of the employment when there is a causal connection between the nature of the employee's duties or conditions under which he is required to perform them and the resulting injury." *James v. CPI Corp*., 897 S.W.2d 92, 95 (Mo. App. 1995) (citation omitted).

Based on our conclusions as to the issue of medical causation, the first element of § 287.020.3(2) has been satisfied as to employee's knee strain injury. We have already determined, based on all the circumstances, that employee's work or employment is a substantial factor causing him a knee strain injury. As to the knee strain, the remaining elements are satisfied as well. A knee strain can be seen as a natural incident of slipping on ice that employee was traversing in the performance of his work duties, can fairly be traced to the employment as a proximate cause, and does not come from a hazard or risk unrelated to employment.

The phrase "in the course of employment" refers to the time, place, and circumstances of the claimed injury. *Cruzan v. City of Paris*, 922 S.W.2d 473, 475 (Mo. App. 1996). Employee was working for employer helping employer's customers when he strained his knee. We conclude that the time, place, and circumstances of the knee strain injury were within the course of employee's employment for employer.

As to the DVT condition, however, given our conclusions on the issue of medical causation, employee is unable to meet his burden of showing his DVT was an injury arising out of and in the course of his employment, because we have determined that employee's work or employment was not a substantial factor causing him to sustain a DVT or its sequelae.

Accordingly, given the foregoing, we conclude that employee's knee strain injury arose out of and in the course of his employment for employer, but that employee's DVT and sequelae did not arise out of and in the course of his employment for employer.

Past and future medical expenses and temporary total disability

Employee seeks unpaid past medical expenses related to his treatment for DVT and its sequelae. Employer does not dispute the amount or the reasonableness of the bills, but argues employee is not entitled to his past medical expenses because employee's DVT was not caused by the February 2004 accident. Employee also seeks temporary total disability and future medical expenses referable to the DVT and its sequelae. Section 287.120 RSMo provides, in relevant part, as follows:

> Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment …

We have concluded that employee's DVT did not arise out of and in the course of his employment. It follows (and we so conclude) that employer is not liable under the Missouri Workers' Compensation Law

for employee's past medical expenses, future medical expenses, or temporary total disability referable to that condition.

Accordingly, we deny employee's claim for past medical expenses, future medical expenses, and temporary total disability.

Award

Based upon the foregoing, we affirm the award of the administrative law judge. Employer is ordered to pay to employee permanent partial disability benefits at the rate of $348.63 for 12 weeks, beginning March 22, 2004.

This award is subject to a lien in favor of Ray Gerritzen, Attorney at Law, in the amount of 25% for necessary legal services rendered.

Any past due compensation shall bear interest as provided by law.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued May 31, 2011, is attached and incorporated only to the extent it is not inconsistent with our findings, conclusions, and analysis herein.

Given at Jefferson City, State of Missouri, this 20th day of December 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary